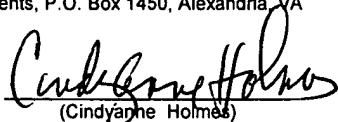


I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: 5/19/08

Signature:


(Cindy Anne Holmes)



Docket No.: MIY-P01-024
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Chu et al.

Application No.: 10/642,395

Confirmation No.: 9490

Filed: August 14, 2003

Art Unit: 3773

For: SYSTEMS, METHODS AND DEVICES
RELATING TO DELIVERY OF MEDICAL
IMPLANTS

Examiner: Melissa K. Ryckman

REPLY TO RESTRICTION REQUIREMENT

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This paper is filed in response to the Restriction Requirement mailed March 17, 2008. The Examiner has found that there are allegedly two distinct inventions in the present application and required restriction to one of those inventions, as follows:

Group I: Claims 1-14, 16, 17, 19, 20, 22-24 and 36-40, drawn to a "delivery device for delivering an implant to an anatomical site in a body of a patient;" and

Group II: Claims 25-33 drawn to a "method of delivering an implant to an anatomical site in a body of a patient."

In response to the restriction requirement, Applicants hereby provisionally elect with traverse the claims of Group I (claims 1-14, 16, 17, 19, 20, 22-24 and 36-40).

Applicants respectfully submit that restriction is improper in this case. As provided in the MPEP, "[i]f the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to

independent or distinct inventions.” MPEP 803 (emphasis added). Applicants assert that a simultaneous search of methods and devices, to the extent such a search is necessary, would not present an undue burden on the Office, at least because methods and devices have already been searched and examined together, apparently without any undue burden on the Office. Prosecution in this case began with the Office issuing an Office Action over two years ago (February 27, 2006), wherein the Office had searched, examined and rejected all claims in the application -- including both device and method claims. Apparently, the burden of conducting that search and the examination that followed was not too burdensome for the Office, as prosecution proceeded on the merits through subsequent office actions issued on August 22, 2006 and February 9, 2007 – all including the device and method claims. Not only was the simultaneous search and examination not burdensome to the Office then, it should be even less burdensome now, as Applicants have further amended the claims in reply to the February 9, 2007 Office Action to bring the scope of the two sets of claims even more closely together. Indeed, many of the features of the device recited in claim 1 are now included in the method claims, such that a search of the method of claim 25 would likely yield most, if not all, references applicable to the device of claim 1.

Applicants accordingly respectfully submit that there is no undue burden on the Office to examine these two groups of claims, and that the Examiner withdraw the outstanding restriction requirement and examine the present claims in their entirety.

Applicants believe no fee is due with this response other than as reflected on the enclosed

Reply dated May 19, 2008
In Reply to Restriction Requirement of March 17, 2008

Application No.: 10/642,395
Docket No.: MIY-P01-024

Petition for Extension of Time. However, if a fee is due, please charge our Deposit Account No. 18-1945 from which the undersigned is authorized to draw.

Dated: May 19, 2008

Respectfully submitted,

By 

Richard G. Allison

Registration No.: 60,386
ROPES & GRAY LLP
One International Place
Boston, Massachusetts 02110-2624
(617) 951-7000
(617) 951-7050 (Fax)
Attorneys/Agents For Applicants